

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

GLOBAL TEL*LINK CORPORATION, a
foreign corporation.

Defendant.

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Charles W. Burson, Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (the "Division"), having reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et. seq.*, and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Upon information and belief, venue is proper in Davidson County, pursuant to the provisions of Tenn. Code Ann. § 47-18-108(a)(3), because it is a county in which Defendant has conducted business. Further, the Defendant has not been provided with ten (10) days notice as set forth in Tenn. Code Ann. § 47-18-108(a)(2) because the Division has determined in writing that the purposes of the Tennessee Consumer Protection Act would be substantially impaired.

II. PARTIES

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by Charles W. Burson, the Attorney General and Reporter, on behalf of and at the request of the Division. (See Exhibit A.)

3. Upon information and belief, Defendant Global Tel*Link Corporation is a Delaware corporation. Defendant's principle place of business is 2609 Cameron Street, Mobile, Alabama 36607. Defendant's registered agent within the State of Tennessee is C.T. Corporation System, 530 Gay Street S600, Knoxville, Tennessee 37902.

III. FACTUAL ALLEGATIONS

4. Upon information and belief, Defendant Global Tel*Link was or is in the business of manufacturing and providing "smart phones" for use in penal facilities such as jails and prisons and possibly other locations throughout the State of Tennessee by the general public. These telephones are designed to restrict any type of telephone call from being placed from the telephone other than collect calls, i.e. where the receiving party must accept the call and agree to pay the costs associated with the telephone call. These "smart phones" are commonly referred to as coin-operated, customer-owned telephone ("COCOT"). These pay telephones offer service for both interLATA and intraLATA calling within the State of Tennessee and around the country. InterLATA calls are telephone calls which cross between one or more LATA lines, such as a call from Memphis to Nashville. IntraLATA calls are calls that remain within a LATA, such as Nashville to Clarksville. Defendant owns, manufactures and sells the "smart phones" to third parties.

5. Upon information and belief, on or about November, 1989, and continuing until approximately May, 1994, Defendant, its agents, assigns, representatives, managers, or other persons under its control and direction (hereinafter "Defendant") began placing Defendant's "smart phones" for use by the general public within the State of Tennessee.

6. Upon information and belief, Defendant programmed, altered, manipulated or designed the "smart phones", which were placed at locations within the State of Tennessee, in such a way that the telephones would unlawfully register additional time for each and every call placed from the pay telephones resulting in greater charges incorrectly being charged to Tennessee consumers receiving such collect calls. For example, the telephones were programmed to begin charging for the consumer for a call upon the first dial tone rather than waiting for the telephone call to be accepted by the receiving party.

7. Upon information and belief, Defendant's "smart phones" internal clocks were programmed, designed, altered or manipulated to unlawfully begin charging consumers fifteen (15) to thirty-six (36) seconds earlier than would have been normally been permitted for collect telephone calls thus unlawfully charging some consumers an additional minute of time above the actual elapsed time of the telephone call.

8. Upon information and belief, the unfair or deceptive practice of incorrectly setting, manipulating, altering or designing the internal clocks of "smart phones" by the Defendant resulted in the telephone calls being billed to certain Tennessee consumers exceeding the rates permitted by Tennessee Public Service Commission tariffs or the Federal Communications Commission tariffs.
9. Upon information and belief, the Defendant also unlawfully added an additional undisclosed twenty-five cents (25¢) or more to the otherwise normally permitted charges of a collect call received by Tennessee consumers from Defendant's "smart phones".
10. Upon information and belief, Defendant also engaged in the unfair or deceptive practice of failing to disclosed the additional charges and, further, modified bills to consumers to indicated that calls lasted longer than they actually did. Such an unlawful practice resulted in additional charges of twenty-five cents (25¢) or more being incorrectly added to the cost of certain collect telephone calls received from Defendant's "smart phones".
11. Upon information and belief, Schumberger Technologies, Inc. purchased all the stock of Defendant, and during the Fall of 1993, the acquiring company uncovered evidence of the deceptive or unfair practices engaged in by the Defendant.
12. Upon information and belief, on or about February 9, 1994, Schumberger Technologies, Inc. informed the Public Service Commissions in Alabama and Louisiana of the illegal practices of the Defendant in twelve (12) states, including Tennessee, where approximately ninety percent (90%) of the collect calls unlawful charged originated.

IV. VIOLATIONS OF THE LAW

13. Defendant's activities and practices of offering for use "smart telephones" within this State constitutes "trade" or "commerce" and the offering of or providing of "goods" or "services" as defined in Tenn. Code Ann. § 47-18-103(5), (8) and (9).
14. Persons or consumers who use or receive Defendant's "smart telephones" are "consumers" as defined in Tenn. Code Ann. § 47-18-103(2) which defines "consumer", in part, as "any natural person who seeks or acquires by purchase, rent, lease, assignment, award by chance or other disposition any goods, services, or property, tangible, real, personal or mixed, an and any other article, commodity, or thing of value wherever situated . . ."
15. All of the acts and practices engaged in and employed by the Defendant as alleged herein are "unfair or deceptive acts or practices affecting the conduct of any trade or commerce" in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a).
16. Each and every act or practice employed by the Defendant as recited above constitutes a separate violation of the Tennessee Consumer Protection Act and each such violation is punishable by a civil

penalty of not more than One Thousand Dollars (\$1,000) as provided by Tenn. Code Ann. § 47-18-108(b).

17. The Defendant's conduct violates the stated purposes of the Tennessee Consumer Protection Act stated at Tenn. Code. Ann. § 47-18-102 which provides, in pertinent part: The provisions of this part shall be liberally construed to promote the following practices:

* * *

(2) To protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in part or wholly within this state;

* * *

(4) To declare and to provide for civil legal means for maintaining ethical standards of dealing between persons engaged in business and the consuming public to the end that good faith dealings between buyers and sellers at all levels of commerce be had in this state . . .

* * *

18. Further, the Defendant has violated Tenn. Code Ann. § 47-18-104(b)(27) which prohibits engaging in any act or practice which is deceptive or unfair to the consumer or any other person. The Defendant's conduct which violates this part includes:

(A) illegally manipulating, altering, designing or otherwise tampering with the setting of the internal clocks of Defendant's pay telephones resulting in consumers being charged for fifteen (15) to thirty-six (36) seconds that were not actually a part of the collect call;

(B) illegally manipulating, altering, designing or otherwise tampering with the setting of the internal clocks of Defendant's pay telephones resulting in consumers being charged in excess of the cap, limit or maximum placed on collect call rates by the Tennessee Public Service Commission or the Federal Communications Commission;

(C) illegally adding twenty-five (25¢) cents or more to charges issued to consumers receiving collect calls from Defendant's pay telephones;

(D) sending incorrect billing information to BellSouth Telephone, Intermountain, GTE and other telephone or long distance companies requesting that the billing companies charge Tennessee consumers for amounts not correctly calculated;

(E) collecting and receiving funds from Tennessee consumers that it would be illegal for Defendant to receive in violation of Tennessee Public Service Commission tariff or

Federal Communications Commission tariff;

(F) collecting and receiving funds from Tennessee consumers that it obtained by misrepresenting the correct amount due from said consumers;

(G) charging consumers for amounts in excess of the cap, limit or maximum set by the Tennessee Public Service Commission or Federal Communications Commission;

(H) making false, misleading and/or deceptive statements, claims and/or representations regarding the cost of any calls for which a consumer owes the Defendant;

(I) failing to fully comply with all applicable Tennessee Public Service Commission rules and regulations;

(J) failing to fully comply with all applicable Federal Communication Commission rules and regulations;

(K) incorrectly adding, including or placing any additional charges, fees or costs to calls placed or received from Defendant's telephones;

(L) sending, forwarding or providing incorrect billing information to BellSouth Telephone, GTE, Intermountain Telephone, any other telephone or long distance companies, or billing agent, so that the billing party would bill, collect or charge Tennessee consumers for amounts not correctly or legally calculated;

(M) collecting or receiving any funds or monies from Tennessee consumers that Defendant obtained by directly or indirectly misrepresenting the correct amount due from said consumers;

(N) charging, billing or otherwise attempting to collect from Tennessee consumers any amounts in excess of any limit, cap or maximum set by the Tennessee Public Service Commission (or its successor agency) or the Federal Communication Commission; and

(O) misrepresenting to consumers that a certain amount is owed in connection with collect calls, when a portion of that amount is not actually due and owing from the consumer.

19. By misrepresenting to consumers that a certain amount is owed in connection with collect calls when a portion of that amount is not actually due and owing from the consumer, Defendant has, directly or indirectly, violated Tenn. Code Ann. § 47-18-104(b)(5) which prohibits "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or grantities that they do not have . . ."

20. By misrepresenting to consumers that a certain amount is owed in connection with collect calls when a portion of that amount is not actually due and owing from the consumer, Defendant has, directly or indirectly, represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. 47-18-104(b)(12).

21. By misrepresenting to consumers that a certain amount is owed in connection with collect calls when a portion of that amount is not actually due and owing from the consumer, Defendant has caused a "likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services . . ." thereby violating Tenn. Code Ann. §§ 47-18-104(b)(2) and (b)(3). Specifically, consumers would assume that any charges billed and collected from them were calculated in compliance with all state and federal laws, regulations and rules.

22. As a result of the various violations of the Act as alleged herein, consumers and/or persons, the exact number of whom is presently unknown to the State, have suffered ascertainable losses of money.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116.

(2) That process issue and be served upon Defendant pursuant to Tenn. Code Ann. § 20-2-201, requiring it to appear and answer this Complaint.

(3) That this Honorable Court adjudge and decree that Defendant has engaged in acts or practices in violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101 *et seq.* as previously set forth.

(4) That this Court permanently enjoin Defendant from engaging in the practices set forth herein:

(a) Engaging in any unfair or deceptive acts or practices in the conduct of its business. Defendant shall abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, including but not limited to Tenn. Code Ann. §§ 47-18-104(b)(2), (3), (5), (12) and (27) which specifically prohibits any and all unfair and/or deceptive acts or practices;

(b) Defendant shall not, directly or indirectly, bill and collect or attempt to bill or collect for telephone calls in excess of the amounts permitted by the Tennessee Public Service Commission tariffs or Federal Communication Commission tariffs;

(c) Defendant shall not, directly or indirectly, design, alter, manipulate, or otherwise tamper with the internal clock of any telephone operated, owned, or leased by Defendant in such a way to result in any incorrect billing to consumers for calls placed from such telephones.

(d) Defendant shall not, directly or indirectly, limit damages or recovery to which consumers may be entitled under Tennessee law;

(e) Defendant shall not, directly or indirectly, make any representation(s) to consumer(s) that a transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law in violation of Tenn. Code Ann. § 47-18-104(b)(12);

(f) Defendant shall not directly or indirectly make false, misleading and/or deceptive statements, claims and/or representations regarding the cost of any calls for which a consumer is owes the Defendant;

(g) Defendant shall fully comply with all applicable Tennessee Public Service Commission (or any successor agency) rules and regulations.

(h) Defendant shall fully comply with all applicable Federal Communication Commission rules and regulations.

(i) Defendant shall not, directly or indirectly, design, manipulate, alter or otherwise tamper with the setting of the internal clocks of telephones in any fashion that will result in consumers being charged for time which was not actually a part of the collect call or any other type of call for which the consumer is charged based upon the length of the call.

(j) Defendant shall not directly or indirectly, design, manipulate, alter or otherwise tamper with the setting of the internal clocks of telephones in any fashion that will result in consumers being charged in excess of any cap, limit or maximum placed by the Tennessee public Service Commission tariff (or any successor agency) or the Federal Communications Commission on collect call rates or any other type of call rates for which the consumer is charged based upon the length of the call;

(k) Defendant shall be prohibited from directly or indirectly adding, including or placing any additional charges, fees or costs to calls placed or received from Defendant's telephones. Without limiting the scope of this provision, Defendant shall be specifically prohibited from directly or indirectly, billing or collecting or attempting to bill and collect from consumers who receive collect calls or who are otherwise charged for calls based upon the length of the call placed or received from Defendant's telephones for any costs, fees or charges above any cap, limit or maximum rate as set or approved by Tennessee

Public Service Commission tariff (or any successor agency) or the Federal Communications Commission.

(l) Defendant shall not, indirectly or directly, send, forward or provide incorrect billing information to BellSouth Telephone, GTE, Intermountain Telephone, any other telephone or long distance companies, or billing agent, so that the billing party would bill, collect or charge Tennessee consumers for amounts not correctly or legally calculated.

(m) Defendant shall not directly or indirectly collect or receive any funds or monies from Tennessee consumers that Defendant obtained by directly or indirectly misrepresenting the correct amount due from said consumers;

(n) Defendant shall not, directly or indirectly, charge, bill or otherwise attempt to collect from Tennessee consumers any amounts in excess of any limit, cap or maximum set by the Tennessee Public Service Commission (or its successor agency) or the Federal Communication Commission;

(o) Defendant shall not, directly or indirectly, misrepresent to consumers that a certain amount is owed in connection with collect calls or any other type call, when a portion of that amount is *not* actually due and owing from the consumer;

(p) Defendant shall not, directly or indirectly, violate Tenn. Code Ann. § 47-18-104(b)(5) which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have; and

(q) Defendant shall not, directly or indirectly, cause likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services which would thereby violate Tenn. Code Ann. §§ 47-18-104(b)(2) and (b)(3).

(5) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses suffered by reasons of the alleged violations of the Tennessee Consumer Protection Act.

(6) That the Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, as is provided by Tenn. Code Ann. § 47-18-108(b).

(7) That the Court adjudge and decree that the Defendant pay civil penalties of not more than one thousand dollars (\$1,000) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

(8) That all costs in this cause be taxed against Defendant.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.